

**ASSEMBLY BILL**

**No. 1321**

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**Introduced by Assembly Member Wieckowski**

February 18, 2011

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An act to amend Section 2934 of, and to add Sections 1214.5 and 2923.7 to, the Civil Code, and to amend Section 27280 of the Government Code, relating to mortgages and deeds of trust.

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as introduced, Wieckowski. Mortgages and deeds of trust: recordation.

Existing law authorizes the recording of an instrument affecting the title to or possession of real property, as well as the recording of an assignment of a mortgage or a deed of trust. Under existing law, the recordation of an interest in real property provides notice of that interest to subsequent purchasers and mortgagees. Existing law provides that an unrecorded conveyance of real property is void against a duly recorded interest by a subsequent purchaser or mortgagee, if he or she acted in good faith and paid valuable consideration.

This bill would instead require that mortgages and deeds of trust as well as assignments of a mortgage or a deed of trust be recorded within 30 days of the execution of the deed or other document creating a security interest in the real property or within 30 days of execution of the assignment. The bill would further require that either the promissory note or a specified certificate affirming the existence of the promissory note be attached at the time of recordation.

Existing law, upon a breach of the obligation of a mortgage or transfer of an interest in property, authorizes the mortgagee, trustee, or

beneficiary to record a notice of default in the office of the county recorder where the mortgaged or trust property is situated.

This bill would prohibit the mortgagee, trustee, or beneficiary from recording a notice of default until 45 days after it has recorded the mortgage or deed of trust and any assignment of the mortgage and deed of trust.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1214.5 is added to the Civil Code, to  
2 read:

3 1214.5. Every mortgage or deed of trust of real property shall  
4 be recorded within 30 days of the execution of the deed or other  
5 document creating a security interest in the real property. The  
6 mortgage or deed of trust shall be recorded in the office of the  
7 recorder of each county where the mortgaged or trust property or  
8 some part or parcel thereof is situated, with either of the following  
9 documents attached:

10 (a) The promissory note.

11 (b) A certificate that confirms the existence of the promissory  
12 note and contains all of the following information:

13 (1) The date of execution of the promissory note.

14 (2) The identities of the parties to the promissory note.

15 (3) The terms of the debt, including, as applicable, the interest  
16 rate, prepayment penalties, and other escrow items.

17 SEC. 2. Section 2923.7 is added to the Civil Code, to read:

18 2923.7. (a) A mortgagee, trustee, or beneficiary may not file  
19 a notice of default until 45 days after it has duly recorded the  
20 mortgage or deed of trust and any subsequent assignments of the  
21 mortgage or the beneficial interest under the deed of trust. Pursuant  
22 to Sections 1214.5 and 2934, the mortgage and deed of trust and  
23 any subsequent assignments shall be recorded with the promissory  
24 note or certificate attached.

25 (b) Nothing in this section shall be construed to require the  
26 county recorder to certify that a mortgage, deed of trust, and any  
27 assignments of the mortgage or beneficial interest under the deed  
28 of trust have been properly recorded prior to recording a notice of  
29 default.

SEC. 3. Section 2934 of the Civil Code is amended to read:

2934. (a) Any assignment of a mortgage and any assignment of the beneficial interest under a deed of trust ~~may~~ shall be recorded, ~~and from~~ with the promissory note or the certificate described in subdivision (b) of Section 1214.5 attached, within 30 days of execution of the assignment. From the time the ~~same~~ assignment is filed for record, it operates as constructive notice of the contents thereof to all persons; ~~and any~~.

(b) Any instrument by which any mortgage or deed of trust of, lien upon, or interest in real property, (or by which any mortgage of, lien upon, or interest in personal property a document evidencing or creating which is required or permitted by law to be recorded), is subordinated or waived as to priority may be recorded, and from the time ~~the same~~ it is filed for record operates as constructive notice of the contents thereof, to all persons.

SEC. 4. Section 27280 of the Government Code is amended to read:

27280. (a) ~~Any~~ Except as provided in subdivision (b), any instrument or judgment affecting the title to or possession of real property may be recorded pursuant to this chapter.

(b) A mortgage or deed of trust shall be recorded within 30 days of the execution of the deed or other document creating a security interest in the real property pursuant to Section 1214.5 of the Civil Code. An assignment of a mortgage or deed of trust shall be recorded within 30 days of the execution of the assignment pursuant to Section 2934 of the Civil Code.

~~(b)~~

(c) Any instrument or document submitted for recordation which effectuates a change in ownership may be accompanied by a change in ownership statement as provided for in Section 480 of the Revenue and Taxation Code. Upon receipt of such change in ownership statement, the recorder shall transmit, as soon as possible, the original statement or true copy thereof to the county assessor along with the recorded document as required by Section 255.7 of the Revenue and Taxation Code. The change in ownership statement shall not be recorded nor open and available to public inspection and shall at all times remain confidential, except as provided in Section 408 of the Revenue and Taxation Code.

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